PJ Cheese, Inc. *and* James Sullivan. Case 10–CA–113862

August 20, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON AND MCFERRAN

On June 6, 2014, Administrative Law Judge William Nelson Cates issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt his recommended Order as modified and set forth in full below.[3]

1. Applying the Board's decision in *D. R. Horton*,[4] the judge found that Respondent PJ Cheese violated Section 8(a)(1) of the Act by maintaining a mandatory arbitration policy that requires its employees, as a condition of employment, to submit their employment-related claims for resolution by individual arbitration, thereby compelling them to waive their Section 7 right to pursue such claims through class or collective action in all forums, arbitral and judicial. The judge further found, again relying on *D. R. Horton*, that maintenance of the arbitration policy also violates Section 8(a)(1) by leading employees to reasonably believe that they are prohibited from filing unfair labor practice charges with the Board. See also, *U-Haul Co. of California*, 347 NLRB 375 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir. 2007). In *Murphy Oil USA, Inc*., 361 NLRB No. 72 (2014), which issued after the judge's decision, the Board affirmed the relevant holdings of *D. R. Horton*. Based on the judge's application of *D. R. Horton*, and the subsequent decision in *Murphy Oil*, we affirm both of the Section 8(a)(1) maintenance violations found by the judge.[5]

The Respondent contends that the maintenance violations are time-barred by Section 10(b) because the arbitration policy was implemented and signed by Charging Party, James Sullivan, more than 6 months before the initial unfair labor practice charge was filed. We reject this contention, as did the judge, because the Respondent continued to maintain the unlawful policy throughout the 6-month period preceding the filing of the charge. The Board has long held under these circumstances that maintenance of an unlawful workplace rule, such as the arbitration policy here, constitutes a continuing violation that is not time-barred by Section 10(b). See *Cellular Sales of Missouri, LLC*, 362 NLRB No. 27, slip op. at 2 and fn. 7 (2015); *The Neiman Marcus Group*, 362 NLRB No. 157, slip op. at 2 fn. 6, and cases cited therein.

We also reject the Respondent's argument that the complaint should be dismissed because Sullivan acknowledged in writing that he voluntarily agreed to the arbitration policy. In footnote 28 of *D. R. Horton*, the Board left open the question whether an agreement to resolve employment disputes only by arbitration and only on an individual basis, would violate the Act if it was not imposed by the employer. Specifically, the Board stated that it did not reach the question:

[1] The Respondent argues that the charges and amended charges supporting the complaint are invalid because they were filed by Sullivan's attorney, without evidence that Sullivan authorized the filings. The judge correctly rejected this argument, noting that under Sec. 102.9 of the Board's Rules & Regulations, a charge can be filed by "any person" and that "person" is defined in Sec. 2(1) of the Act to include "legal representatives." Contrary to the Respondent's argument, there is no requirement in the Rules that a charging party authorize a legal representative to file a charge on his or her behalf.

[2] For the reasons set forth in detail in his dissent in *Murphy Oil USA, Inc*., 361 NLRB No. 72, slip op. at 35–58 (2014), Member Johnson would not find that the Respondent's maintenance or enforcement of its arbitration agreement violates the Act insofar as it has been applied to prevent employees from pursuing class and other collective actions. Because he does not find these violations, Member Johnson finds it unnecessary to consider here whether or under what circumstances the remedies related to the maintenance or enforcement violations would be appropriate. See *Murphy Oil*, slip op. at 39 fn. 15 (Member Johnson, dissenting); see generally *BE & K Construction Co. v. NLRB*, 536 U.S. 516 (2002). Further, because he finds no merit to these allegations, he does not reach the Respondent's related argument that the charging party was not engaged in concerted activity when, as an individual plaintiff, he brought a collective FLSA claim in Federal district court. Nor does he pass on the Respondent's other defenses.

Finally, Member Johnson finds it unnecessary to pass on the merits of whether the Respondent maintained a mandatory arbitration policy that employees would reasonably believe prohibits them from filing charges with the Board because the Respondent did not raise in its exceptions the Dispute Resolution Program's language stating that the arbitration policy "will not prevent you from filing a charge with any state or federal administrative agency." Thus, he agrees with his colleagues that any argument or defense based on that language is waived.

[3] We shall substitute a new notice to conform to the Order as modified.

[4] 357 NLRB No. 184 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013).

[5] For the reasons set forth in fn. 16 of *Murphy Oil,* we reject the Respondent's assertion that the decision in *D. R. Horton* was issued by an invalidly constituted majority and is thus null and void.

> whether, if arbitration is a mutually beneficial means of dispute resolution, an employer can enter into an agreement that is **not a condition of employment** with an individual employee to resolve either a particular dispute or all potential employment disputes through non-class arbitration rather than litigation in court. (emphasis added).

Here, however, the Respondent's arbitration policy, the Dispute Resolution Program (DRP), states prominently, in capitalized and bolded letters, that it is a "**CONDITION OF YOUR EMPLOYMENT AND IS THE EXCLUSIVE MEANS BY WHICH THOSE PROBLEMS MAY BE RESOLVED**." The DRP further specifies that it is a self-executing document and that "submission of an application, acceptance of employment or the continuation of employment by an individual shall be deemed to be acceptance of the Dispute Resolution Program. No signature shall be required for the policy to be applicable." This same self-executing provision is included in a separate document, the "Agreement for Receipt for Dispute Resolution Program" (Agreement), that is distributed to all employees for their signature and which incorporates the unlawful provisions of the DRP.

Together, both documents make explicit that the arbitration policy is a condition of employment and that employees are bound to it regardless of whether they sign the Agreement. As such, neither the DRP nor the Agreement presents the "not a condition of employment" issue left open in *D. R. Horton*.[6]

2. The judge also found, and we agree, that the Respondent, through its parent company, PJ United, Inc. (PJU), violated Section 8(a)(1) by enforcing the arbitration policy in response to a lawsuit that Sullivan filed against PJU. Sullivan filed the collective action lawsuit in the United States District Court for the Northern District of Alabama, on behalf of himself and similarly situated employees, alleging that PJU and its CEO committed wage violations under the Fair Labor Standards Act (FLSA). In response, PJU filed a motion with the court to stay the lawsuit "until arbitration of Sullivan's dispute with the Company has been had on a single-claimant/noncollective or class-wide basis in accordance with the terms of the Agreements and the [DRPs]." PJU averred in its motion that the DRP defines the "Company" to include PJU as well as Sullivan's employer, the Respondent.[7]

In *Murphy Oil*, the Board found that a respondent's motion in Federal district court in response to an FLSA collective action, to compel employees to individually arbitrate their wage disputes as required by its unlawful arbitration agreement, violated Section 8(a)(1) based on established precedent that enforcement of an unlawful rule is itself unlawful because it interferes with the exercise of Section 7 rights. 361 NLRB No. 72, slip op. at 19. As in *Murphy Oil*, we find that the Respondent enforced its arbitration policy in violation of Section 8(a)(1), by the district court motion filed by PJU to compel Sullivan and similarly situated employees to arbitrate their employment claims individually.[8]

The Respondent argues that it cannot be found to have committed the enforcement violation because PJU alone filed the district court motion. We disagree. The arbitration policy on which PJU relied in support of its motion specifies that it is a "contract between the employee and the Company" and the DRP defines the Company as PJU and its subsidiaries, including the Respondent. And as noted above, PJU acknowledged in its motion that the "Company" included the Respondent. Thus, by PJU making clear to the court that the Company seeking enforcement of the arbitration contract between Sullivan and the Company included the Respondent, it was, as the judge correctly found, a "direct participa[nt]" in that court enforcement action. We conclude, therefore, that the Respondent is appropriately held accountable for the

[6] We note that there is a statement on the last page of the DRP, under the heading "Not an Employment Contract/Exclusive Remedy," that states this "Program will not prevent you from filing a charge with any state or federal administrative agency." The Respondent did not raise any defense to either of the 8(a)(1) maintenance allegations that was predicated on this language, either to the judge or in exceptions to the Board. Therefore any potential defense is waived under Sec. 102.46 (b)(2) of the Board's Rules and Regulations.

In any event, we find that the language does not render the arbitration policy lawful. First, the DRP specifies under the heading "Claims Not Subject to Arbitration," that only three claims or disputes are not covered by the policy. The sentence referencing charges filed with State or Federal administrative agencies is not a specified exclusion in that section. Second, the sentence appears only in the DRP, but is omitted from the Agreement that employees are given to sign. As a result, there is a conflict both within the DRP itself, and between the DRP and the Agreement, that creates an ambiguity that likely would confuse employees and applicants as to whether the sentence is applicable at all. Such ambiguity, properly construed against the Respondent as drafter of the arbitration policy, precludes reliance on the sentence as a defense to the maintenance violations. *Lafayette Park Hotel*, 326 NLRB 824, 828 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999).

[7] The court granted the motion, but deferred to the arbitrator the question of whether the wage claims should be arbitrated individually or collectively.

[8] To the extent the Respondent argues that Sullivan was not engaged in concerted activity in filing the FLSA suit in Federal district court, we reject that argument. As the Board made clear in *Beyoglu*, 362 NLRB No. 152 (2015), "the filing of an employment-related class or collective action by an individual is an attempt to initiate, to induce, or to prepare for group action and is therefore conduct protected by Section 7." Id., slip op. at 2. See also, *D. R. Horton*, 357 NLRB No. 184, slip op. at 2.

8(a)(1) enforcement violation committed against Sullivan and his fellow employees.[9]

ORDER[10]

The Respondent, PJ Cheese, Inc., Birmingham, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a mandatory and binding arbitration agreement that employees reasonably would believe bars or restricts employees' rights to file charges with the National Labor Relations Board or to access the Board's processes.

(b) Maintaining and/or enforcing a mandatory and binding arbitration agreement that requires employees, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful arbitration agreement in all of its forms, or revise it in all of its forms to make clear to employees that the arbitration agreement does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums, and that it does not restrict employees' right to file charges with the National Labor Relations Board or to access the Board's processes.

(b) Notify all current and former employees who were required to sign the unlawful arbitration agreement that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

(c) Notify the United States District Court for the Northern District of Alabama that it has rescinded or revised the unlawful arbitration agreement upon which it based its motion to stay the collective FLSA lawsuit of James Sullivan and to compel individual arbitration of his claim, and inform the court that it no longer opposes the action on the basis of the unlawful arbitration agreement.

(d) In the manner set forth in the remedy section of the judge's decision, reimburse James Sullivan for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing the Respondent's motion to stay his collective lawsuit and compel individual arbitration.

(e) Within 14 days after service by the Region, post at its Birmingham, Alabama facility copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix" to all current employees and former employees employed by the Respondent at any time since January 17, 2013, and any employees against whom the Respondent has enforced its mandatory arbitration agreement since July 17, 2013.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 10, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 20, 2015

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

[9] The Respondent also argues that the enforcement violation is foreclosed because Sullivan was no longer employed at the time the court motion was filed. We reject this argument, first because former employees are not stripped of their Sec. 7 rights, *Waco, Inc*., 273 NLRB 746, 747 (1984), and second because the arbitration policy here specifically states that it "survives the termination of [Sullivan's] employment."

[10] Consistent with our decision in *Murphy Oil*, we amend the judge's remedy to order the Respondent to notify the district court that it has rescinded or revised the unlawful aspects of its arbitration policy, and to inform the court that it no longer opposes Sullivan's FLSA lawsuit on the basis of the unlawful policy.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notices reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mandatory and binding arbitration agreement that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board or to access the Board's processes.

WE WILL NOT maintain and/or enforce a mandatory and binding arbitration agreement that requires our employees, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the unlawful arbitration agreement in all of its forms, or revise it in all of its forms to make clear that the unlawful arbitration agreement does not constitute a waiver of your right to maintain employment-related joint, class, or collective actions in all forums, and that it does not restrict your right to file charges with the National Labor Relations Board or to access the Board's processes.

WE WILL notify all current and former employees who were required to sign the unlawful arbitration agreement that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

WE WILL notify the court in which we have moved to stay the collective lawsuit filed by James Sullivan that we have rescinded or revised the unlawful arbitration agreement upon which we based our motion, and WE WILL inform the court that we no longer oppose Sullivan's collective lawsuit on the basis of that agreement.

WE WILL reimburse James Sullivan for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing our motion to stay his collective lawsuit and compel individual arbitration.

PJ CHEESE, INC.

The Board's decision can be found at www.nlrb.gov/case/10-CA-113862 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E. Room 5011, Washington, D.C. or by calling (202) 273–1940.

Kerstin I. Meyers, Esq., for the Government.[1]
William K. Handcock, Esq., for the Company.[2]
Mark Potashnick, Esq., for the Charging Party.[3]

DECISION

STATEMENT OF THE CASE

WILLIAM NELSON CATES, Administrative Law Judge. This case was tried before me on April 28, 2014, in Birmingham, Alabama. The charge initiating this matter was filed on September 23, 2013,[4] and amended on November 15 and 17 and again on December 27. The General Counsel issued a complaint and notice of hearing (complaint) on January 3, 2014. The Government alleges the Company, since on or about January 2010, has maintained a mandatory arbitration policy which contains provisions that unlawfully prohibits employees from engaging in protected concerted activities and that leads employees reasonably to believe they are prohibited from filing charges with the National Labor Relations Board (Board). It is stipulated that Charging Party Sullivan, on November 30, 2010, signed the Company's Agreement and Receipt for Dispute

[1] I shall refer to counsel for the General Counsel as counsel for the Government and the General Counsel as the Government.

[2] I shall refer to counsel for the Respondent as counsel for the Company and shall refer to the Respondent as the Company. It is noted that in the parties partial stipulation of facts, set forth elsewhere here, the Company is referred to as the Respondent.

[3] I shall refer to James Sullivan as the Charging Party and counsel for Sullivan as counsel for the Charging Party.

[4] All dates herein are 2013, unless stated otherwise.

Resolution Program in which Sullivan agreed, as a condition of his employment, that all work place disputes would be submitted to final and binding arbitration on an individual basis and not on a class-wide basis. It is stipulated that on July 9, Charging Party Sullivan filed a fair labor standards complaint against the Company in the United States District Court for the Northern District of Alabama, Western Division, captioned *James Sullivan v. PJ United, Inc.,* and *Douglas Stephens Civil Action No.7: 13-cv-01275-LSC.* It is alleged that since on or about July 17, the Company, in response to Sullivan's suit, has sought to enforce the arbitration agreement by filing with the court a Motion to Stay the Trial of This Civil Action and require the matter be arbitrated on an individual basis. The Government alleges, that by the conduct just described, the Company has been interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act (the Act) and is in violation of Section (8)(a)(1) of the Act.

In essence, this is another case raising issues concerning arbitration policies that effect collective bargaining and representational rights related to *D. R. Horton, Inc*., 357 NLRB No. 184 (2012), enf. denied in pertinent part 737 F.3d 344 (2013).

The Company, in its answer to the complaint, and at trial, denies having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Only one witness was called (by the Company) and the parties were able to stipulate to the matters about which the witness testified. I have studied the whole record including the parties partial written stipulations of fact which, I received in evidence, as Joint Exhibits 1–9, and based on the detailed findings and analysis below, I conclude and find the Company violated the Act essentially as alleged in the complaint.

FINDINGS OF FACT

The Charge

The Company in its posttrial brief contends the complaint was not preceded by a valid charge. The Company correctly notes the original and each of the three amended charges were filed by the Charging Party's attorney on behalf of the Charging Party. The Company asserts no evidence was presented at trial to establish Charging Party Sullivan authorized Charging Party Attorney Potashnick to file and amend the charges on his behalf. The Company also contends the charge was not "sworn to" as required by the Board's Rules and Regulations Section 102.11.

I find the original and each of the amended charges were validly filed. See *Appex Investigation & Security Co*., 302 NLRB 815, 818–819 (1991). In *Appex,* such a procedural defense was addressed, in part, as follows:

> Section 102.9 of the Board's Rules and Regulations provides that a charge may be filed "by any person". . . .
>
> "The simple fact is that anyone for any reason may file charges with the Board." *Operating Engineers Local 39 (Kaiser Foundation)*, 268 NLRB 115, 116 (1983).

It is clear the Charging Party's attorney may validly file a charge on behalf of the Charging Party. Section 102.1 of the Board's Rules and Regulations defines the term "person" as inter alia a "representative" for the person. Charging Party Attorney Potashnick signed the charge, and amended charges, with the following "Declaration" which states: "I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief."

I conclude and find the Company's contention that the complaint here was not preceded by a valid charge is without merit.

I. JURISDICTION AND SUPERVISORY STATUS

The Company is an Alabama corporation with an office and place of business in Birmingham, Alabama, from which it operates a number of retail restaurant facilities in Alabama, Louisiana, Texas, Mississippi, Tennessee, Illinois, Missouri, Ohio, Virginia, and Utah. During the calendar year ending December 1, the Company in conducting its business operations derived gross revenues in excess of $500,000, and purchased and received at its Alabama facilities goods and products valued in excess of $50,000 directly from points located outside the State of Alabama. The parties admit and I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties do not contest that Company Director of Human Resources Becky Gwarjanski is a supervisor of the Company within the meaning of Section 2(11) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Issues

The principle issues in this proceeding are whether the Company has violated, and is violating, Section 8(a)(1) of the Act by maintaining a mandatory arbitration agreement which contains provisions that unlawfully prohibits employees from engaging in protected concerted activities; and whether the language of the mandatory agreement also leads employees reasonably to believe that they are prohibited from filing charges with the Board.

B. Facts

The stipulated facts (on the record and by exhibits) are, in pertinent part, as follows:

> 1. Sullivan voluntarily ended his employment with the Company in early January 2012.[5] (Tr. p. 23, LL. 20–23.)
>
> 2. Company Director of Human Resources Becky Gwarjanski, in a written declaration given under oath (Jt. Exh. 2)[6] and in trial testimony here (Tr. p. 26, LL. 13–14), indicated the Company is a wholly-owned subsidiary of PJ United, Inc. Gwarjanski also indicated PJ United developed the Dispute Resolution Program (DRP) which covers all of the Company's employees, and has been modified from time to time, with the most recent modified version being in 2010. A copy

[5] I shall refer to the transcript as Tr. with "p. or pp." indicating the page(s) and "L. or LL." as the line(s).

[6] I shall refer to the "joint exhibits" as Jt. Exh. with the number assigned each joint exhibit.

of the 2010 modification of the DRP was received in evidence (Jt. Exh. 3). Relevant portions of the DRP read as follows:

DISPUTE RESOLUTION PROGRAM

This Dispute Resolution Program is adopted for PJ United, Inc., PJ Cheese, Inc., PJ Louisiana, LLC, PJ Chippewa, LLC, PJ Utah, LLC, and Ohio Pizza Delivery Company, all of which are collectively hereinafter referred to as the "Company."

. . . .

THIS PROGRAM IS A CONDITION OF YOUR EMPLOYMENT AND IS THE MANDATORY AND EXCLUSIVE MEANS BY WHICH THOSE PROBLEMS MAY BE RESOLVED, SO READ THE INFORMATION IN THIS PROGRAM BOOKLET CAREFULLY.

Program Rules

Claims Subject to Arbitration

Claims and disputes subject to arbitration include all those legal claims you may now or in the future have against the Company (and its successors or assigns) or against its officers, directors, shareholders, employees or agents, including claims related to any Company employee benefit program or against its fiduciaries or administrator (in their personal or official capacity), and all claims that the Company may now or in the future have against you, whether or not arising out of your employment or termination, except as expressly excluded under the "Claims Not Subject to Arbitration" section below.

The legal claims subject to arbitration include, but are not to be limited to:

- Claims for wages or other compensation,
- Claims for breach of any contract, covenant or warranty (expressed or implied);
- Tort claims (including, but not limited to, claims for physical, mental or psychological injury, but excluding statutory workers compensation claims);
- Claims for wrongful termination,
- Sexual harassment,
- Discrimination (including, but not limited to, claims based on race, sex, sexual orientation, religion, national origin, age, medical condition or disability whether under federal, state or local law);
- Claims for benefits or claims for damages or other remedies under any employees benefit program sponsored by the Company (after exhausting administrative remedies under the terms of such plans);
- "Whistleblower" claims under any federal, state or other governmental law, statute, regulation or ordinance;
- Claims for a violation of any other noncriminal federal, state or other governmental law, statute, regulation or ordinance, and
- Claims for retaliation under any law, statute, regulation or ordinance, including retaliation under any workers compensation law or regulation.

Claims Not Subject to Arbitration

The only claim or disputes not subject to arbitration are as follows:

- Any claim by an employee for benefits under a plan or program which provides its own binding arbitration procedure.
- Any statutory workers compensation claim; and
- Unemployment insurance claims.

Neither the employee nor the Company has to submit the items listed under this "Claims Not Subject to Arbitration" caption to arbitration under this Program and may seek and obtain relief from a court or the appropriate administrative agency.

The parties also agree that any arbitration between the employee and the Company is their individual claim and that any claim subject to arbitration will not be arbitrated on a collective or a class-wide basis, provided however, that this provision shall not apply to any prospective class or collective action based on alleged violations of wage and hour laws if, and only if, such claim should cause the agreement to arbitrate to be unenforceable under the prevailing law.

Also, any nonlegal dispute is not subject to arbitration. Examples include disputes over a performance evaluation, issues with co-workers, or complaints about your work site or work assignment which do not allege a legal violation.

3. Charging Party Sullivan signed the Agreement and Receipt for Dispute Resolution Program on November 30, 2010, which was received in evidence (Jt. Exh. 4). Relevant portions of the Receipt reads as follows:

Agreement And Receipt For Dispute Resolution Program

MUTUAL PROMISE TO RESOLVE CLAIMS BY BINDING ARBITRATION. The Company and I agree that all legal claims or disputes covered by the Agreement must be submitted to binding arbitration and that this binding arbitration will be the sole and exclusive final remedy for resolving any such claim or dispute. I also agree that any arbitration between the Company and me is of an individual claim and that any claim subject to arbitration will not be arbitrated on a multi-claimant, a collective or a class-wide basis.

The mutual obligations set forth in this Agreement shall constitute a contract between the Employee and the Company but shall not change an Employee's at-will relationship or any term of any other contract or agreement between the Company and Employee. This Policy shall constitute the entire agreement between the Employee and Company for the resolution of Covered Claims. The submission of an application, acceptance of employment or the continuation of employment by an individual shall be deemed to be acceptance of the dispute resolution program. No signature shall be required for the policy to be applicable.

Legally protected rights covered by this Dispute Resolution Program are all legal claims, including claims for wages or other compensation, claims for breach of any contract, covenant or warranty (expressed or implied); that claims (including, but not limited to, claims for physical, mental or psychological injury, but excluding statutory workers compensation claims); claims for wrongful termination, sexual harassment; discrimination (including, but not limited to, claims based on race, sex, religion, national origin, age, medical condition or disability, whether under federal, state or local law); claims for benefits or claims for damages of other remedies under any employee benefit program sponsored by the Company (after exhausting administrative remedies under the terms of such plans); "whistleblower" claims under any federal, state or other governmental law, statute, regulation or ordinance, and claims for retaliation under any law, statute, regulation or ordinance, including retaliation under any workers compensation law or regulation.

I understand and agree that by entering into this Agreement, I anticipate gaining the benefits of a speedy, impartial dispute resolution procedure. This procedure is explained in the Dispute Resolution Program Booklet, which I acknowledge I have received and read or have had an opportunity to read.

MULTI-STATE BUSINESS. I understand and agree the Company is engaged in transactions involving interstate commence and that my employment involves such commerce. I agree that the Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings under this Agreement.

4. Sullivan, on July 9, filed a Complaint in United States District Court, Northern District of Alabama, Western Division, against the Company in *James Sullivan v. PJ United, Inc., and Douglas Stephens Civil Action No. 7: 13-cv-1275-LSC.* (Jt. Exh. 5.) Relevant portions of the Complaint read as follows:

COMPLAINT

Plaintiff James Sullivan, individually and on behalf of all other similarly situated delivery drivers, for his Complaint against defendants PJ United, Inc. and Douglas Stephens, alleges as follow:

2. Plaintiff James Sullivan, and all other similarly situated delivery drivers, work or previously worked as delivery drivers at Papa John's restaurants owned and operated by Defendants. This lawsuit is brought as a collective action under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq*., to recover unpaid minimum wages owed to Plaintiff and all other similarly situated workers employed by Defendants.

Collective Allegations

38. Plaintiff Sullivan brings this FLSA claim as an "opt-in" collective action on behalf of similarly situated delivery drivers who opt-in to this case pursuant to 29 U.S.C. § 216(b).

39. Plaintiff, individually and on behalf of other similarly situated employees, seeks relief on a collective basis challenging Defendants' practice of failing to pay employees federal minimum wage. The number and identity of other plaintiffs yet to opt-in may be ascertained from Defendants' records, and potential class members may be notified of the pendency of this action by regular mail.

5. In response to Sullivan's Complaint the Company filed with the Federal District Court a Motion to Stay the Trial of this Civil Action on July 17. (Jt. Exh. 6.) Relevant portions of the Motion read as follows:

1. The Company has adopted a Dispute Resolution Program (the "Program"). (Gwarjanski Dec., Exh. 1.)

2. Sullivan twice signed an Agreement and Receipt for Alternative Dispute Resolution (the "Agreement"), once on November 30, 2010 and once on May 28, 2008. (Gwarjanski Dec., Exhs. 2 and 3.)

3. The Program reflects that all legal claims, including claims for wages, that arise from employment with the Company shall be resolved through arbitration as provided in the Program. (Gwarjanski Dec., Exh. 1.)

4. The Program defines the Company to include PJ United, Inc.; certain related companies, including Sullivan's employer, PJ Cheese, Inc. ("PJ Cheese"); and the Company's officers, directors, shareholders, and employees, including Douglas Stephens. (Gwarjanski Dec., Exh. 1, p. 6; Doc. 1, par. 6.)

5. Each signed Acknowledgement reflects that Sullivan received a copy of the Program; that he read or had the opportunity to read the Program; that he agreed that all legal claims between himself and the Company, including claims for wages, "must be submitted to binding arbitration," that the mutual obligations set forth in the Agreement constitute a contract between Sullivan and the Company; that "the Company is engaged in transactions involving interstate commerce and that [Sullivan's] employment involves such commerce," and that Sullivan voluntarily entered into the Agreement. (Gwarjanski Dec., Exhs. 2 and 3.)

. . . .

6. In each signed Agreement, Sullivan unambiguously stated: "I also agree that any arbitration between the Company and me is of an individual claim and that any claim subject to arbitration will not be arbitrated on a multi-claimant, a collective or a class-wide basis." (Gwarjanski Dec., Exhs. 2 and 3.) The Program contains the same provision. (Gwarjanski Dec., Exh. 1, p. 6.)

7. Each signed agreement constitutes a written agreement to arbitrate within the meaning of Section 3 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 3.

8. Sullivan's Complaint reflects a dispute concerning wages, which dispute arises from his employment with the Company. (Doc. 1.)

> 8. [9.] Section 3 of the FAA requires this Court to stay the trial of this civil action "until such arbitration has been had in accordance with the terms of the agreement."
>
> . . . .
>
> 11. The Company has submitted an arbitration demand to the American Arbitration Association seeking arbitration of Sullivan's individual claims against the Company and therefore is not in default in proceeding with arbitration under the signed Agreements.
>
> WHEREFORE, the Company respectfully moves this Court to enter an order staying the trial of this civil action until arbitration of Sullivan's dispute with the Company has been had on a single-claimant/noncollective or class-wide basis in accordance with the terms of the Agreements and the Programs.
>
> 6. On August 5, the Company filed a Response to Sullivan's Attempt to Show Cause. (Jt. Exh. 7.)
>
> 7. On September 10, United States District Court Judge L. Scott Coogler issued a Memorandum of Opinion (Jt. Exh. 8) in which Judge Coogler concluded the Company's Motion to Stay Trial Pending Arbitration would be granted, but, the Company's request to the Court to order Sullivan to pursue his arbitration only on a single claimant basis would be denied because Judge Coogler concluded the arbitrator must decide whether the collective action waiver applies in this case.
>
> 8. On September 10 United States District Court Judge Coogler issued an Order (Jt. Exh. 9) in accordance with the Memorandum of Opinion set forth above.

I first address the issue of whether the allegations of the complaint are time-barred. The Company contends the entire complaint should be dismissed because it is time-barred by Section 10(b) of the Act in that the complaint is based on events that occurred outside the applicable limitations period. Section 10(b) of the Act in part provides ". . . no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charges with the Board . . . ." It is undisputed Charging Party Sullivan signed the most recent Agreement and Receipt for Dispute Resolution Program containing the mandatory arbitration policy, at issue here, on November 30, 2010, well outside the 10(b) period. As noted elsewhere, here the original charge was filed on September 23. It is alleged the Company, about July 17, has enforced the mandatory arbitration policy, by filing a Motion to Stay Trial in the United States District Court for the Northern District of Alabama, Western Division, and, by subsequent responsive pleading. The allegations are within the 10(b) limitations period, but, are they inescapably grounded in pre-10(b) events? They are not. The Company's July 17, filing of its Motion to Stay Trial of this (Sullivan's) civil action in which the Company sought to stay the proceedings until Sullivan's dispute with the Company has been decided on a single-claimant/ noncollective or class-wide basis pursuant to the mandatory arbitration policy signed by Sullivan, is clearly within the 10(b) limitation period. The enforcement action by the Company, based on Sullivan's signed mandatory arbitration policy agreement, took place approximately 2 months before the charge here was filed. This action, by the Company, demonstrates it was enforcing its mandatory agreement policy within the applicable time period.

More specifically, I find the Company's 10(b) defense without merit. While it is clear Sullivan signed the mandatory arbitration agreement policy on November 30, 2010, well outside the 10(b) period, the Company continued to maintain and enforce the mandatory arbitration policy well into the 10(b) period. The Government's allegation the Company has, since July 17, 2013, a time within the 10(b) period, continued to maintain its mandatory arbitration policy is established. The Company's motion filing on July 17, a time clearly within the 10(b) period, was grounded on Sullivan's having signed the mandatory arbitration policy in which he agreed to arbitration on an individual basis. In these circumstances, the date Sullivan signed the mandatory arbitration policy is not controlling or relevant. What is controlling and relevant is the Company continued to maintain and enforce Sullivan's signed mandatory arbitration policy agreement within the 10(b) period. By continuing to maintain and enforce the mandatory arbitration policy within the 10(b) period establishes the conduct and action by the Company is not inescapably grounded in pre-10(b) events. The Board, in *Lafayette Park Hotel*, 326 NLRB 824 (1998), held an employer commits a continuing violation of Section 8(a)(1) of the Act throughout the period an unlawful rule, is maintained and enforcement is sought. Stated differently, the Board has held that, where an employer, as here, enforces an unlawful rule during the 10(b) period it violates Section 8(a)(1) of the Act. Such is a continuing violation. See: *Teamsters Local 293 (R. L. Lipton Distributing)* 311 NLRB 538, 539 (1993). The continuing violation I find here precludes the Company from a valid 10(b) defense.

I reject the Company's contention that Charging Party Sullivan was not an employee of the Company at the time the Company filed its Motion to Stay in response to his *James Sullivan v. PJ United, Inc*., and *Douglas Stephens Civil Action No. 7*: *13-cv-01275-LSC*, case. The Company's argument that since Sullivan voluntarily terminated his employment with the Company outside the 10(b) limitations period his right to engage in concerted activities or file actions related thereto had long ended when the Company filed its Motion to Stay. I find Sullivan remained an employee within the meaning of the Act at all times, material herein. The Company, for example, still considered him an employee when it filed its Motion to Stay because the Motion to Stay was grounded on documents signed by Sullivan as an employee of the Company.

The Company asserts Sullivan was not engaging in "protected concerted activity" when he filed his litigation in *James Sullivan v. PJ United, Inc.,* and *Douglas Stephens Civil Action No.7: 13-cv-01275-LSC.* The Company asserts Sullivan was not involved in any group action when he filed his class action lawsuit because he did not seek support of others before filing his suit. The Company's argument is without merit. The Board in *D. R. Horton, Inc.* held that filing a class action lawsuit is protected concerted activity. The Board in so holding relied on *Meyers Industries,* 281 NLRB 882, 887 (1986), for the proposi-

tion that the actions of a single employee, such as Sullivan here, are protected, if the employee "seek[s] to initiate or to induce or to prepare for group action." *D. R. Horton, Inc.,* slip op. at 4. The Board further held "an individual who files a class or collective action . . . in court . . . seeks to initiate or induce group action and is engaged in conduct protected by Section 7." The filing of a class action lawsuit to address wages, hours, and other terms and conditions of employment, as is the case here, constitutes concerted protected activity, unless done with malice or in bad faith of which there is none demonstrated here.

As noted elsewhere, here the complaint alleges the Company has violated Section 8(a)(1) of the Act by, since about January 2010, maintaining and enforcing its mandatory arbitration policy that unlawfully prohibits employees from engaging in protected concerted activities, and, that leads employees reasonably to believe that they are prohibited from filing charges with the Board.

The arbitration policy here is mandatory. The policy in all capital letters states; "THIS PROGRAM IS A CONDITION OF YOUR EMPLOYMENT AND IS THE EXCLUSIVE MEANS BY WHICH THOSE PROBLEMS MAY BE RESOLVED, SO READ THE INFORMATION IN THIS PROGRAM BOOKLET CAREFULLY." Some of the specifically stated claims subject to the *mandatory* arbitration policy includes, in limited part; wages, legal claims regarding termination, discrimination based on sex, sexual orientation, religion, national origin, age, medical condition or disability whether under Federal, State, or Local law; and, claims for a violation of any other noncriminal Federal, State, or other governmental law, statute, regulation, or ordinance. The only claims not subject to arbitration are; any claim by an employee for benefits under a plan or program which provides its own binding arbitration procedure; any statutory workers compensation claims; and, unemployment insurance claims. In the Agreement and Receipt for Dispute Resolution Program that employees are required to sign, reads in part; "The Company and I agree that all legal claims or disputes covered by the Agreement must be submitted to binding arbitration and that this binding arbitration will be the sole and exclusive final remedy for resolving any such claim or dispute. I also agree that any arbitration between the Company and me is of an individual claim and that any claim subject to arbitration will not be arbitrated on a multi-claimant, a collective or a class-wide basis."

In looking at the overall content of the mandatory arbitration policy here, it is necessary to review the rules the Board has established for doing so.

In evaluating whether a rule applied to all employees, as a condition of continued employment, including the mandatory arbitration policy at issue here, violates Section 8(a)(1) of the Act, the Board, as noted in *D. R. Horton, Inc.*, at 4–6, applies its test set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), citing *U–Haul Co. of California,* 347 NLRB 375, 377 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir. 2007). Pursuant to *Lutheran Heritage* the inquiry, or test to be applied, is whether the rule explicitly restricts activities protected by Section 7 of the Act. If so, the rule is unlawful. If it does not explicitly restrict protected activity, the finding of a violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the rule to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

The Company's mandatory arbitration policy *explicitly* restricts activities protected by Section 7 of the Act and, as such, is unlawful under Section 8(a)(1) of the Act. In this regard the Board in *D. R. Horton, Inc.,* supra slip op. at 13, held an employer violates Section 8(a)(1) of the Act "by requiring employees [as here] to waive their right to collectively pursue employment-related claims in all forums, arbitral and judicial." The Board noted at 10 "The right to engage in collective action—including collective legal action—is the core substantive right protected by the NLRA and is the foundation on which the Act and Federal labor policy rests." Stated differently, the Board in *D. R. Horton, Inc.,* supra determined that as a condition of employment "employers may not compel employees to waive their NLRA right to collectively pursue litigation of employment claims in all forums arbitral and judicial." *D. R. Horton, Inc*., slip op. at 12.

The General Counsel also alleges the mandatory arbitration policy leads employees reasonably to believe that they are prohibited from filing charges with the Board. I agree. The agreement language, which in part, states: "The Company and I agree that all legal claims and disputes covered by the agreement must be submitted to binding arbitration and that this binding arbitration will be the sole and exclusive final remedy for resolving any such claim or dispute" would lead employees to reasonably believe that employment, wage, discrimination, and termination issues must be submitted exclusively to binding arbitration and not to the Board. The only employment issues not subject to the mandatory arbitration policy here involves workers compensation and unemployment insurance claims or any benefit plan that has its own arbitration procedure. Simply stated the language of the mandatory arbitration policy here may reasonably be construed, by employees, to restrict them from, concertedly or individually, filing charges under the NLRA and such interferes with the employees Section 7 rights and violates Section 8(a)(1) of the Act.

The Company, in its posttrial, brief notes the Government seeks, as party of any remedy, the Company reimburse Charging Party Sullivan for his reasonable litigation expenses related to the Company's Motion to Stay in his civil action *James Sullivan v. PJ United, Inc.,* and *Douglas Stephens Civil Action No. 7: 13-cv-01275-LSC*. The Company contends the requested relief cannot be granted because PJ Cheese, the Company here, did not file the Motion to Stay in the civil action but rather PJ United, which is not named as a party in this proceeding, filed the action.

I find no merit in the Company's contention. First, I note PJ Cheese is a wholly-owned subsidiary of PJ United. PJ United adopted the Dispute Resolution Program for its PJ Cheese employees. The Acknowledgement and Receipt for the Dispute Resolution Program that Charging Party Sullivan signed was used by the Company in its defense to the civil action brought by Sullivan against PJ United. In fact, without the Company's (PJ Cheese) active participation in the civil suit PJ United would not have had, or been able to advance, the defense it did

in Charging Party Sullivan's civil suit. Stated differently, PJ United lacked any agreement with Charging Party Sullivan and in order to prevail in the civil suit, as it did, PJ United needed, and obtained, the Company here, PJ Cheese's, direct participation in its legal defense based on provisions of the Dispute Resolution Program. I note Company (PJ Cheese) Director of Human Resources Becky Gwarjanski provided a sworn declaration in PJ United's defense outlining the fact Charging Party Sullivan had signed and was bound by the Dispute Resolution Program for employees of the Company here (PJ Cheese). The Company's actions directly caused the accrual of legal fees and I conclude Charging Party Sullivan should be compensated for those expenses as explained in the Remedy section of the decision.

CONCLUSIONS OF LAW

1. The Company, PJ Cheese, Inc., Birmingham, Alabama, is, and has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By maintaining a mandatory arbitration policy, that waives the right of its employees to maintain class or collective actions in all forums, judicial or arbitral, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violates Section 8(a)(1) of the Act.

3. By maintaining a mandatory arbitration policy, that leads employees reasonably to believe they are prohibited from filing charges with the National Labor Relations Board the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violates Section 8(a)(1) of the Act.

4. By, on July 17, 2013, enforcing the mandatory arbitration agreement by asserting the provisions thereof in litigation brought against the Company in *James Sullivan v. PJ United, Inc.,* and *Douglas Stephens Civil Action No. 7: 13-cv-01275-LSC* and by filing a motion to, in essence, compel plaintiffs to individually arbitrate their class-wide wage and hour claims against the Company, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and has violated Section 8(a)(1) of the Act.

REMEDY

Having found the Company has engaged in certain unfair labor practices, I shall recommend it cease and desist therefrom and take certain affirmative action designated to effectuate the policies of the Act.

I recommend the Company be ordered to rescind, modify or revise its mandatory arbitration policy to clearly inform its employees the agreement does not constitute a waiver, in all forums, of their right to maintain employment-related class or collective actions and/or to prohibit them from filing charges with the National Labor Relations Board, and, to notify its employees the mandatory arbitration policy has been rescinded, modified or revised and provide a copy of any modified or revised agreement to all employees.

I recommend the Company be required to reimburse Charging Party James Sullivan for any litigation and related expenses, with interest to-date, and in the future, directly related to the Company's filings in *James Sullivan v. PJ United, Inc.,* and *Douglas Stephens Civil Action No. 7: 13-cv-01275-LSC.* See: *Federal Security, Inc*., 359 NLRB No. 1, slip op. at 14 (2012). Determining the applicable rate of interest on the reimbursement will be as outlined in *New Horizons for the Retarded*, 283 NLRB 1173 (1987) (adopting the Internal Revenue Service rate for underpayment of Federal taxes). Interest on all amounts due to Charging Party Sullivan shall be computed on a daily bases as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

I recommend the Company be required upon request, to file a joint motion with Charging Party James Sullivan to vacate United States District Court Judge L. Scott Coogler's Order of September 10, 2013, granting the Company's motion to stay the trial of Sullivan's civil action in *James Sullivan v. PJ United, Inc., and Douglas Stephens Civil Action No.7: 13-cv-01275-LSC.* See *Federal Security, Inc*., supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Company, PJ Cheese, Birmingham, Alabama, it officers, agents, successors, and assigns, shall

1. Cease and desist form

(a) Maintaining a mandatory arbitration policy, that waives employees' right to maintain class or collective actions in all forums; whether arbitral or judicial.

(b) Maintaining a mandatory arbitration policy that leads employees reasonably to believe that they are prohibited from filing charges with the National Labor Relations Board.

(c) Seeking to enforce its mandatory arbitration policy by filings in any court to compel individual arbitration pursuant to the terms of its mandatory arbitration policy.

(d) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their right under the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Within 7 calendar days after the Board enters its Decision, and upon request of Charging Party James Sullivan, file a joint motion with Sullivan to vacate United States District Court Judge L. Scott Coogler's Order of September 10, 2013, granting the Company's motion to stay the trial of Sullivan's civil action in *James Sullivan v. PJ United, Inc., and Douglas Stephens Civil Action No. 7: 13-cv-01275-LSC.*

(b) Reimburse Charging Party James Sullivan for any legal and related expenses incurred, to-date and in the future, with respect to *James Sullivan v. PJ United, Inc.,* and *Douglas Stephens Civil Action No. 7: 13-cv-01275-LSC,* with interest, as described in the remedy section of this decision.

(c) Rescind, modify or revise its mandatory arbitration policy to ensure its employees the mandatory arbitration policy does not contain or constitute a waiver, in all forums, of their right to

[7] If no exceptions are filed provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 201.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

maintain employment-related class or collective actions.

(d) Rescind, modify or revise its mandatory arbitration policy to ensure its employees the mandatory arbitration policy does not prohibit them from filing charges with the National Labor Relations Board.

(e) Notify its employees of the rescinded, modified or revised mandatory arbitration policy and provide a copy of any modified or revised policy to each employee.

(f) Within 14 days after service by the Region, post at its Birmingham, Alabama facility, copies of the notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Company's authorized representative, shall be posted by the Company and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as email, posting on an intranet or an internet site, or other electronic means, if the Company customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since July 17, 2013.

Dated at Washington, D.C. June 6, 2014

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain or enforce a mandatory arbitration policy that waives employees' right to maintain class or collective action in all forums, arbitral or judicial.

WE WILL NOT maintain or enforce a mandatory arbitration policy that prohibits you from filing charges with the National Labor Relations Board.

WE WILL NOT enforce, or attempt to enforce, any agreement, by filing petition(s) in any court, to compel you to individually arbitrate your work related concerns.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights under the Act.

WE WILL within 7 days after the Board Order, and, upon request of Charging Party James Sullivan, file a joint motion to vacate United States District Court Judge L. Scott Coogler's Order of September 10, 2013, granting the Company's motion to stay the trial of Sullivan's civil action in *James Sullivan v. PJ United, Inc., and Douglas Stephens Civil Action No. 7: 13-cv-01275-LSC.*

WE WILL reimburse Charging Party James Sullivan any reasonable legal and other expenses incurred related to our various responses to his civil action in *James Sullivan v. PJ United, Inc., and Douglas Stephens Civil Action No. 7: 13-cv-01275-LSC,* plus interest.

WE WILL rescind, modify or revise our mandatory arbitration policy to make clear to you our policy does not constitute a waiver in all forums of your right to maintain employment-related class or collective actions and to make clear to you our policy does not prohibit filing charges with the National Labor Relations Board.

WE WILL notify our employees we have rescinded, modified or revised our mandatory arbitration policy and provide each of you a copy of any revised or modified policy.

PJ CHEESE, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/10-CA-113862 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."